

May 2, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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DECISION ON A SEPA THRESHOLD DETERMINATION APPEAL and
REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File No. **L95P0026**
Proposed Ordinance No. **97-160**

LEEANN MEADOWS
Threshold Determination Appeal and
Preliminary Plat Application

Location: Between SE 304th Street and SE 306th Street (if extended), and 100th Avenue SE (if constructed) and 112th Avenue SE

**Owner/
Applicant:** Lee and Ann Baerny
19824 SE 206th Street
Maple Valley, WA 98038

Appellant: Doug Brandner
10925 Southeast 304th Street, Suite 6
Tacoma, WA 98466

Intervenor: Daniel Lennon
30425 112th Avenue SE
Auburn, WA 98092

SUMMARY OF RECOMMENDATIONS:

SEPA:
Division's Preliminary: Deny the appeal
Division's Final: Deny the appeal
Examiner: Deny the appeal

PLAT:

Division's Preliminary: Approve, subject to conditions (modified)
Division's Final: Approve, subject to conditions (modified)
Examiner: Approve, subject to conditions (modified)

PRELIMINARY MATTERS:

Application or petition submitted: December 19, 1995
Notice of appeal received by Examiner: March 11, 1997
Statement of appeal received by Examiner: March 11, 1997

EXAMINER PROCEEDINGS:

Pre-hearing Conference: March 13, 1997
Hearing Opened: March 27, 1997
Hearing Closed: April 10, 1997

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Surface water drainage--offsite flooding, downstream capacity
- Traffic impacts
- Residential density incentives
- Boundary disputes

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

A. INTRODUCTION AND PROCEDURAL BACKGROUND

1. Owner/Developer: Lee and Ann Baerny
19824 SE 206th Street
Maple Valley, WA 98038

Engineer: Baseline Engineering, Inc.
7010 27th Street West, Suite 6
Tacoma, WA 98466

SEPA Appellant: Doug Brandner
10925 Se 304th Street
Auburn, WA 98092

STR: 8-21-5
Location: Between SE 304th Street and SE 306th Street (if extended), and 100th Avenue SE (if constructed) and 112th Avenue SE
Zoning: R-4-P
Acreage: 4.48
Number of Lots: 22
Density: 4.91 dwelling units per acre
Lot Size: Ranges from approximately 5,000 to 8,000 square feet
Proposed Use: Detached single family residences
Sewage Disposal: City of Auburn
Water Supply: City of Auburn
Fire District: #44
School District: Auburn School District #408
Complete
Application: December 19, 1995

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner submitted to the April 10, 1997 public hearing are found to be correct and are incorporated herein by reference. Copies of the LUSD report will be attached hereto for submittal to the Metropolitan King County Council. The LUSD staff recommends denial of the threshold determination appeal and approval of the preliminary plat application, subject to conditions.
3. A preliminary plat application was filed by Lee and Ann Baerny on December 19, 1995, to subdivide 4.48 acres into 23 lots for single family residential development. The property is located southwest of the intersection of 112th Avenue Southeast and Southeast 304th Street within the rapidly urbanizing Lea Hill neighborhood east of the City of Auburn. The property is zoned R-4-P; to its northeast lies the plat of Carrington Bluff which is in the process of buildout. Other similar urban density plats have been or are planned to be constructed south of the Leeann Meadows site. However, the properties immediately adjacent to Leeann Meadows are currently developed with rural residential home sites on lots between one and two acres in size.
4. The Applicant proposes to develop five lots dedicated to moderate income housing and thereby obtain a density bonus pursuant to the provisions of KCC Chapter 21A.34. As revised on February 21, 1997, the plat now proposes 22 lots, which includes four bonus units in excess of the base density of 18. The increased density of the proposed plat compared to immediately surrounding residential properties is a primary concern expressed by area residents.
5. On February 25, 1997, the Department of Development and Environmental Services issued a mitigated threshold determination of nonsignificance ("MDNS") for the Leeann Meadows proposal. The MDNS imposes upon the project the highly restrictive "stream protection" drainage release standard, which requires that the post-development 100-year storm event be detained and released at one-half the ten-year pre-development rate. This restrictive standard

was required both because of capacity restrictions within the downstream conveyance system and a highly erosive condition characterizing Green River Tributary 0069 where site runoff is eventually discharged.

6. The SEPA threshold determination was appealed on March 12, 1997, by Doug and Alyce Brandner, who live on a slightly less than 1-1/2 acre parcel west of and downslope from Leeann Meadows. The issues raised by the Brandners on appeal concern the potential flooding of their adjacent property by runoff from Leeann Meadows and the capacity of the plat's downstream conveyance system.
7. A prehearing conference was held on the combined preliminary plat application and SEPA threshold determination appeal on March 13, 1997, and a prehearing order was issued on March 14, 1997. Because full formal notice of the preliminary plat hearing had already been issued for a March 27, 1997, date which would not provide the Brandners with adequate opportunity to prepare their appeal, it was decided to formally open the hearing on March 27 in order to avoid having to completely redo the notice, but to defer the actual receipt of testimony until April 10, 1997. Thus, although formally opened on March 27, 1997, the substantive hearing took place upon the later date, April 10, 1997. On March 27, 1997, a petition to intervene in the proceeding was received from Dan Lennon, an adjacent property owner southeast of the plat, which petition was granted.

B. SEPA THRESHOLD DETERMINATION APPEAL

8. The Leeann Meadows property currently is characterized by pasture grasses on its eastern half and trees near its western boundary. The property maintains a gentle slope to the west at about a 5% grade. The Brandners, who live immediately west of the proposed plat, currently experience flooding problems from the Leeann Meadows site in its undeveloped state. As shown in the Appellants' photographs and video tape, during the major storm event which occurred in January 1990 sheet flows from the subdivision parcel flooded their yard, driveway and basement. After crossing the Brandner property these sheet flows continue west across the Klontz parcel where they are channeled into a system which empties into the roadside ditch on the east side of 108th Avenue Southeast.
9. Sheet flow problems across the Brandner property were identified by the Applicant's engineer in his Level One drainage study. In response thereto in July 1996 the Applicant requested a variance from Surface Water Design Manual standards in order to divert runoff from the western tier of plat lots to Tract A in the site's northwest corner. The diversion variance granted August 26, 1996, relieves the Applicant of the obligation to release western boundary runoff at its natural location and reroutes it to the plat's R/D pond. Since the R/D pond will release flows to an 18-inch pipe on the south side of Southeast 304th Street which in turn empties into the 108th Avenue Southeast ditch system, the ultimate destination of such flows remains 108th Avenue Southeast and Tributary 0069 but via a more northerly and circuitous route.

The SWM variance proposes to divert to the pond all roof and road drainage from the westernmost Leeann Meadows lots but recognizes that some yard runoff will continue to sheet flow west. Considering that in the current state the entire Leeann Meadows property sheet flows west to the Brandner parcel, and that after development this sheet flow will be limited to

the westernmost 30 or 40 feet of the site, the runoff directly onto the Brandner property after construction of Leeann Meadows should probably be only a fraction of current volumes.

10. Nonetheless, the Brandners have expressed ongoing skepticism about the viability of the drainage plan for Leeann Meadows and in consultation with an engineer have proposed some further restrictions on site runoff. With respect to their concern that the southwest corner of Leeann Meadows is topographically four to six feet lower than the northwest corner where Tract A will be located, the response is that the site will be appropriately graded and drainage pipes installed at the depths required to create positive flow to the drainage facility. The suggestion that a berm be constructed along the project's western property line to direct flows to the southwest corner from plat back yards seems both to be unnecessary in terms of the small quantity of runoff involved and counterproductive to the extent that normal sheet flows would be consolidated and channelized in violation of SWM Manual requirements.

Finally, the Applicant has responded to the Brandners' concerns that the Tract A detention pond may result in subsurface flows onto their property by offering to perform a geotechnical analysis of the pond and its infiltration potential at the time of construction. If a significant risk of infiltration and subsurface flow to the west is identified, an impervious pond liner will be required.

11. The capacity limitations within the roadside ditch system lying on the east side of 108th Avenue Southeast are well documented. This system features a series of 12-inch culverts under individual access driveways for adjacent lots which overflow at events greater than the ten-year frequency storm. Moreover, due to the general inadequacy of the system these culverts tend to be chronically plugged with gravel and debris. In surface area Leeann Meadows constitutes less than 10% of the upstream basin for the 108th Avenue Southeast ditch system. Rather than upgrade all the culverts to 18-inch pipes, the Applicant has opted to over-detain runoff onsite and release it at less than the flow volume for the predevelopment ten-year storm. This will not alleviate the existing flooding conditions, but neither should it make such conditions worse.

The capacity and erosion problems which characterize the 108th Avenue Southeast ditch system and Tributary 0069 downstream are pervasive and will require a regional solution beyond the means of any small development project to implement. Nonetheless, because the proposed release from Leeann Meadows presupposes a functional ten-year capacity within the 108th Avenue Southeast conveyance system, it is reasonable to require the Applicant to clear gravel and debris from these culverts prior to final plat approval so that there will be at least one point in time when the calculated capacity of the system will actually be available.

12. More difficult to explain is the testimony and photographic evidence submitted by area residents which suggest that the 18-inch culvert on the south side of Southeast 304th Street, newly installed in 1994 in conjunction with the development of Carrington Bluff, has flooded during recent storms. According to the engineering analysis, the capacity of this system ought to be adequate to accommodate the 100-year storm event. Plat conditions will require this culvert to be inspected for blockage problems prior to final plat approval.
13. The Appellants have argued that the bonus density being sought by the Applicant, which may result in the development of as many as four lots above the base density level, will increase

downstream runoff problems. While there is certainly a correlation between higher density and greater runoff volumes, the issue of downstream flooding is essentially a matter of release rates. So long as the project's R/D pond is designed to release post-development flows at rates below the current pre-development level, an increase in density *per se* will not exacerbate downstream capacity flooding problems.

C. PRELIMINARY PLAT APPLICATION

14. With respect to the traffic impacts of the Leeann Meadows development, the King County Department of Transportation issued its Certificate of Concurrency for the project on November 22, 1995, based on a determination that adequate transportation improvements will be in place at the time of development, or within six years thereof, to serve the needs of the project. Staff has made a further determination pursuant to the County Intersection Standards that the traffic generated by this subdivision will fall below the regulatory threshold which requires mitigation for impacts to substandard intersections affected by the development.

Nonetheless, numerous area residents have testified that Southeast 304th Street west of the project site, where it becomes 304th Way before turning south into 104th Avenue Southeast and descending the plateau to the Green River Valley, is an unsafe roadway, virtually impassible during icy weather. Paulette Norman of the Department of Transportation testified that although this roadway section has a slightly elevated accident rate and is designated a medium priority project on the County transportation needs list, it has adequate capacity for the volumes of traffic projected, and the roadway safety issues fall below the threshold for immediate action. Thus, upgrading this section of roadway remains a relatively low priority task even though it has been identified as one of the infrastructure improvements ultimately required to successfully transform the Lea Hill neighborhood from rural to urban densities.

15. A 7,000 square foot Class 3 wetland has been recently identified on the property on its east side approximately where the proposed onsite access road will intersect 112th Avenue Southeast. Although intersection spacing requirements probably limit the degree to which the access road may be relocated to the north, its design will be reviewed to minimize wetland impacts. In addition, a wetland enhancement area will need to be identified so that construction impacts can be compensated as required by the Sensitive Areas Ordinance. The conditions will be modified to assure that any new wetland areas created will be located away from the western boundary of the plat in order to avoid offsite hydrologic impacts.
16. The Brandners as well as a number of other area residents have expressed opposition to the approval of bonus lots for the Leeann Meadows subdivision based on the residential density incentives (RDI) contained in KCC Chapter 21A.34. Their position is that the creation of greater density in excess of the base density allowed by the R-4 zone will result in a pocket of high density housing in conflict with the larger rural residential lots that surround it.
17. Although it is clear from KCC 21A.34.010.D that one of the purposes of the ordinance is to provide "a review process to allow evaluation of proposed density increases and the public benefits offered to earn them, and to give the public opportunities to review and comment", and under KCC 21A.34.060.A.2 that the preliminary plat hearing serves also the hearing on the RDI application, KCC Chapter 21A.34 generally fails to specify the review standards by

which the RDI proposal is to be evaluated. While we note that where the primary proposal does not require a public hearing KCC 21A.34.060.A.3 stipulates that the RDI application "shall be subject to the decision criteria for conditional use permits", this information provides us with little practical guidance because the conditional use permit criteria focus on the harmonizing of dissimilar uses rather than (as proposed here) the slight intensification of a residential use within a residential neighborhood.

18. In short, the matter of applying decisional criteria to the review of RDI applications appears not to have been well thought out within the Chapter 21A.34 text. Looking at the larger policy picture, what emerges is that the primary goal underlying the residential density incentives program is to encourage developers to provide an increased stock of affordable housing. The 1994 Comprehensive Plan at Policies H-201 through H-205 evince a strong public purpose supporting affordable housing incentives. In such context it is our view that a residential density incentives application is entitled to be approved unless it is accompanied by specific adverse impacts of a type which cannot be satisfactorily mitigated. We do not find such adverse impacts to be attendant to the instant application, for which the objection is primarily to the existence in principle of density incentives and not to their unique adverse consequences at this particular location.
19. Finally, it appears that the exterior boundaries of the Leeann Meadows site may be subject to property line disputes involving adjacent lot owners. At least some of these claims involve issues of adverse possession. While prior to final approval RCW 58.17.165 will require the Applicant to file a plat certificate containing a full description of the property, consent of all owners to the subdivision and a title report, it is beyond the jurisdictional authority of this proceeding to litigate boundary line disputes. If these issues cannot be resolved with the Applicant through negotiation, it may be necessary for adjacent land owners to file actions in Superior Court to preserve their claims, especially any prescriptive claims which do not appear in the chain of title.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. The Appellants have not met their burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous. The record indicates that the drainage impacts from the Leeann Meadows plat to the Appellants' property probably will be less after development than in the present predevelopment state. With respect to an admittedly overburdened downstream conveyance system serving this property, the Applicant will be required under the existing MDNS to overdetrain site runoff flows so that downstream impacts after development will be no greater than they are currently. While these measures will not resolve existing problems, they are

designed to assure that such problems will not become exacerbated by the development of this proposal.

3. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts.
4. If approved subject to the conditions recommended below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110. The Applicant has met the requirements of KCC Chapter 21A.34 for the conferral of a density bonus based on the provision of affordable housing within the plat.
5. The conditions of approval recommended herein, including dedications and easements, will provide improvements which promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The threshold determination appeal of Doug and Alyce Brandner is DENIED. The MDNS issued by the Department of Development and Environmental Services on February 25, 1997, is affirmed.

RECOMMENDATION:

APPROVE the preliminary plat of Leeann Meadows, as revised and received on February 21, 1997, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and maximum density provisions of the R-4 zone classification and KCC 21.34. Since four additional lots have been requested in the plat, over and above the number of lots permitted by the base density (18 lots), the proposed subdivision shall comply with the requirements of KCC 21A.34.040F1d. In this regard, the four lots which will contain residences for moderate income home buyers shall be specified on the final plat, as well as the reporting requirements established by the King County Housing and Community Development Program (KCHCDP) concerning buyer eligibility and housing price. (These requirements apply only to the first buyer of the residence on the specified lot, and do not apply to subsequent buyers.) The applicant shall also execute any agreements with King County necessary to implement KCC 21A.34.040F1d, as determined by KCHCDP.

4. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Land Use Services Division (LUSD).
5. The applicant shall obtain final approval from the King County Health Department.
6. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
7. The applicant shall obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
8. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04 and the storm drainage requirements and guidelines as established by the Water and Land Resources Division (formerly known as the Surface Water Management Division). Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code and requirements which apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and updates which were adopted by Public Rule effective January 1, 1995. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by LUSD Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
9. The following road improvements are required for this subdivision and shall be constructed in compliance with the 1993 King County Road Standards:
 - a. The main east-west access road shall be improved to the urban subaccess road standard.

- b. The north-south stub road adjoining Lots 19 through 22 shall be improved to the urban subaccess road standard; however, a half street section may be constructed where the right-of-way is 30 feet in width. A temporary turnaround shall be constructed where this street terminates at the southern boundary of the subdivision.
 - c. Regarding the two on-site roads, road improvements in excess of minimum requirements may be constructed (e.g. a wider driving surface) if desired by the applicant and approved by LUSD.
 - d. The frontage of the property along 112th Ave. SE (west side only) shall be improved to the urban neighborhood collector standard.
 - e. The frontage of the property along SE 304th St. (south side only) shall be improved to the urban collector arterial standard with provision for a bike lane.
 - f. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
10. The applicant applied for and was granted a stormwater diversion variance to divert drainage to the SE 304th Street drainage system. The engineering plans shall demonstrate compliance with the approval conditions of Variance L96V0082 at engineering plan submittal. In addition, with respect to the downstream conveyance system, prior to final recording the applicant shall clean out the culverts within the ditch on the east side of 108th Avenue Southeast and inspect and remove any blockages within the 18-inch pipe on the south side of Southeast 304th Street between the plat and 108th Avenue Southeast.
11. All utilities within proposed rights-of-way shall be included within a franchise approved by the King County Council, prior to final plat recording.
12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
13. There shall be no direct vehicular access to or from 112th Ave. SE or SE 304th St. from abutting lots. A note to this effect shall be placed on the final plat and engineering plans.
14. A planter island, if proposed within the cul-de-sac bulb, shall be maintained by the abutting lot owners. This shall be stated on the face of the final plat.
15. Assuming the proposed subdivision is developed with 22 lots, a minimum of 5,800 square feet of suitable recreation space shall be provided on-site, consistent with the requirements of KCC 21A.14.180, 21A.14.190 and 21A.34.080E. The onsite recreation tract may be reduced to

4,000 square feet and a supplemental fee paid to compensate for reduction of recreation space below the ordinance minimum, as provided in condition 16, below. If the number of lots is reduced from 22, the amount of on-site recreation space may be correspondingly reduced, subject to the approval of LUSD. A recreation space improvement plan shall be reviewed and approved by LUSD and the King County Parks Division, prior to engineering plan approval.

16. If insufficient area is proposed on-site for recreation space, relative to the number of lots in the final plat and the requirements of KCC 21A.14.180 and 21A.34.080E, a fee-in-lieu of recreation space shall be paid by the applicant to King County, consistent with the provisions of KCC 21A.14.185. The amount of the fee shall be determined by the King County Parks Division.
17. A homeowners' association or other workable organization shall be established to the satisfaction of LUSD which provides for the ownership and continued maintenance of the recreation and/or open space areas.
18. Street trees shall be provided as follows:
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along SE 304th Street and 112th Avenue Southeast. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation (KCDOT) determines that trees should not be located in the street right-of-way.
 - c. If KCDOT determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners, the Homeowners' Association, or other workable organization, unless the County has adopted a maintenance program. The approach chosen shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by LUSD and KCDOT if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by LUSD prior to engineering plan approval. KCDOT shall also review the street tree plan if the street trees will be located within the right-of-way.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SE 304th St. or 112th Ave. SE, adjacent to the site, are on a bus route. If on a bus route, the street tree plan shall also be reviewed by Metro.

- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 19. Clearing and grading activities on the site shall conform with Soos Creek "P" Suffix Condition IB (pp. 147 - 148, Soos Creek Area Zoning). Building envelopes or clearing restrictions shall appear on the final engineering plans, as required by Condition IB.
- 20. The following condition of mitigation has been imposed under authority of SEPA as a necessary requirement of this development:

The site detention facilities shall be designed using the SCS-SBUH, 24-hour Storm Method described in the 1990 Design Manual (or other method as approved by DDES) such that post-development 2-year, 10-year, and 100-year storm flows do not exceed pre-development storm flows equaling one-half of the 2-year, 2-year, and 10-year flows, respectively. A 30-percent volumetric safety factor shall be added to the facility. This detention standard can be modified as approved by DDES if the downstream erosion problems are corrected (1990 SWM Design Manual).

- 21. A Class 3 wetland, approximately 7,000 square feet in size, exists on the eastern portion of the site. Mitigation shall be provided to address the impact from crossing this wetland with the proposed onsite road, consistent with KCC 21A.24. LUSD may require moving the intersection of the proposed onsite road with 112th Avenue Southeast to the north, consistent with the intersection spacing requirements of the King County Road Standards, to minimize the impact to the wetland. A wetland study shall be submitted prior to engineering plan submittal, to determine the boundaries of the wetland and proposed mitigation for the impacts from crossing the wetland with the proposed onsite road. If provision of an onsite wetland replacement area is required, it shall be located at least 100 feet east of the western plat boundary. Bonding may be required to assure implementation of the mitigation plan.
- 22. At the time of construction of the proposed detention pond and bioswale, an evaluation shall be made by a registered Geotechnical Engineer regarding the necessity of installing a liner or other sealing method in the pond and bioswale. The purpose of this evaluation is to determine whether the pond and bioswale sealing is necessary to prevent seepage onto the adjoining property to the west. Notes requiring this evaluation shall be placed on the engineering plans at engineering plan submittal. The final recommendation by the Geotechnical Engineer shall be reviewed by DDES.

ORDERED this 2nd day of May, 1997.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 2nd day of May, 1997, to the following parties and interested persons:

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Auburn, WA 98002

A.C. Watkins
30240 108th Place SE
Auburn, WA 98092

Tiley Forsberg/Gail Padgett
10910 SE 304th Street
Auburn, WA 98092

Donald E. and Edna Plumb
11205 SE 305th Street
Auburn, WA 98092

Ken and Dana Poppe
30426 107th Avenue SE
Auburn, WA 98092

Fred Roesch
32545 107th Avenue SE
Auburn, WA 98092

Robert R. Rudge
10845 SE 305th Place
Auburn, WA 98092

Monte Salisbury
10907 SE 302nd
Auburn, WA 98092

Garry and Carol Stearns
30241 110th Place SE
Auburn, WA 98002

Mark Stiefel
22312 113th Avenue Southeast
Kent, WA 98031

Steve Swank
20410 2nd Ave. S
Des Moines, WA 98198

Robert Wallace
30304 110th Place SE
Auburn, WA 98002

Todd Wicklund
11301 SE 304th Avenue
Auburn, WA 98002

Greg Borba, DDES/LUSD
Ray Florent, DDES/LUSD
Rich Hudson, DDES/LUSD
Aileen McManus, DDES/LUSD
Lisa Pringle, DDES/LUSD
Steven Townsend, DDES/LUSD
Bruce Whittaker, DDES/LUSD
Seattle-King County Health
Depart/Environmental Health
Prosecuting Attorneys Office/Civil Division

Laura Casey, DDES/LUSD
Lanny Henoch, DDES/LUSD
Michaelene Manion, DDES/LUSD
Paulette Norman, KCDOT/Roads
Gary Samek, KCDOT/Roads
Caroline Whalen, Metropolitan
King County Council
King Conservation District

PLAT
NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner on the preliminary plat application, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before May 16, 1997**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before May 23, 1997**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

SEPA DECISION

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding SEPA appeals.

Stafford L. Smith was the hearing examiner in this proceeding. Also participating at the hearing were Lanny Henoeh, Bruce Whittaker, Rich Hudson, Laura Casey, Ray Florent, and Paulette Norman, representing the County; Rick Moose, Doug Brandner, Alyce Brandner, Linda Curtis, Dan Lennon, Beverly Claudon, Mark Stiefel, Jim Mondt, Mike Curtis and Ron Holt.

The following exhibits were offered and entered into the hearing record:

- | | |
|----------------|--|
| Exhibit No. 1 | LUSD File No. L95P0026 |
| Exhibit No. 2 | LUSD staff report prepared for the April 10, 1997 public hearing |
| Exhibit No. 3 | Applicant's application, received December 19, 1995 |
| Exhibit No. 4 | Environmental checklist, received December 19, 1996 |
| Exhibit No. 5 | SEPA Mitigated Determination of Nonsignificance, effective February 25, 1997 |
| Exhibit No. 6 | Letter of appeal of the SEPA determination, filed by Doug and Alyce Brandner and dated March 10, 1997 |
| Exhibit No. 7 | Affidavit of Posting, received February 28, 1997 |
| Exhibit No. 8 | Revised plat map, received February 21, 1997 |
| Exhibit No. 9 | Land use map - Kroll maps 708E and 720E |
| Exhibit No. 10 | Assessor map - NE 1/4 of 8-21-5 |
| Exhibit No. 11 | Level 1 Downstream Analysis, dated November 29, 1995 |
| Exhibit No. 12 | Level 3 Downstream Analysis, dated November 22, 1996 |
| Exhibit No. 13 | Drainage Variance Application L96V0082 |
| Exhibit No. 14 | Letter from Joe Miles and Jeff O'Neill, dated August 26, 1996, approving Variance application L96V0082 |
| Exhibit No. 15 | Faxed cover sheet and map received from Baseline Engineering, Inc. on April 8, 1997 |
| Exhibit No. 16 | Letter from M/M Brandner, dated February 24, 1997 |
| Exhibit No. 17 | Two page letter from Douglas Brandner to the Office of the Hearing Examiner, dated March 26, 1997 |
| Exhibit No. 18 | One page letter from Douglas Brandner to the Office of the Hearing Examiner, dated March 26, 1997 |
| Exhibit No. 19 | Letter from Daniel J. Lennon, dated March 11, 1997 |
| Exhibit No. 20 | Letter from Cheryl Lennon, dated March 11, 1997 |
| Exhibit No. 21 | Letter from Robert R. Rudge, dated March 10, 1997 |
| Exhibit No. 22 | Letter from Richard Garneau, faxed March 12, 1997 |
| Exhibit No. 23 | Letter from Gail Holt (Spectrum Sign Co.), dated March 12, 1997 |
| Exhibit No. 24 | Undated letter from M/M Curtis |
| Exhibit No. 25 | Letter from M/M Claudon, faxed March 13, 1997 |
| Exhibit No. 26 | Letter from M/M Poppe, dated March 12, 1997 |
| Exhibit No. 27 | Letter from Lucia Brewer, dated March 11, 1997 |
| Exhibit No. 28 | Undated letter from Tiley Forsberg and Fail Padgett |

Exhibit No. 29	Letter from Mark W. Stiefel, P.E. (consulting engineer for Appellant), dated March 24, 1997
Exhibit No. 30	New Condition--No. 21--addressing wetlands and revised Condition No. 15
Exhibit No. 31	Brandner video
Exhibit No. 32	Map used in Brandner testimony
Exhibit No. 33	Garneau video (Exhibits 33 and 34 on same video cassette)
Exhibit No. 34	Curtis video (Exhibits 33 and 34 on same video cassette)
Exhibit No. 35	Photographs taken and submitted by Brandners
Exhibit No. 36	New Condition No. 22
Exhibit No. 37	Letter dated March 20, 1997, from Geraldine Creson to Kent Pullen and response by Karlene Zimmerman, aide to Councilman Pullen

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